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12 Attorneys for Plaintiff
13 COURTHOUSE NEWS SERVICE

14
15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 Courthouse News Service,
19 Plaintiff,
20 vs.
21 David Yamasaki, in his official capacity
22 as Court Executive Officer/Clerk of the
23 Orange County Superior Court,
24 Defendant.
25
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27
28

Case No. 8:17-cv-126

**NOTICE OF PENDENCY OF
OTHER ACTIONS OR
PROCEEDINGS**

[Central District Local Rule 83-1.4]

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1 TO THE COURT, THE PARTIES, AND ALL COUNSEL OF RECORD:
 2 PLEASE TAKE NOTICE THAT pursuant to Central District Local Rule 83-
 3 1.4, this action for declaratory and injunctive relief brought against the Clerk and
 4 Court Executive Officer of the Orange County Superior Court (“OSC”) in his
 5 official capacity involves all or a material part of the subject matter of another action
 6 filed pursuant to 42 U.S.C. § 1983 in this District by Plaintiff Courthouse News
 7 Service (“CNS”) against Michael Planet, the Clerk and Court Executive Officer of
 8 the Ventura County Superior Court (“VSC”), which resulted in a judgment and
 9 permanent injunction entered by the Honorable S. James Otero in favor of CNS and
 10 against Planet following cross summary judgment motions and is currently the
 11 subject of cross appeals pending before the Ninth Circuit.

12 **A. Description of Other Actions**

13 In September 2011, CNS sued Planet, in his official capacity at VSC, for
 14 declaratory and injunctive relief under the First Amendment and 42 U.S.C. § 1983.
 15 CNS’s complaint alleged that Planet’s policy of denying access to new civil
 16 complaints until after they were “processed,” and the resulting delays before CNS
 17 could see the complaints, violated CNS’s right of access guaranteed by the First
 18 Amendment. *Courthouse News Service v. Planet*, Central District of California
 19 Case No. CV11-08083 SJO (FFMx). The case was initially assigned to the
 20 Honorable Manuel Real, who twice granted motions to dismiss filed by Defendant,
 21 both of which were reversed by the United States Court of Appeals for the Ninth
 22 Circuit. *Courthouse News Service v. Planet*, 750 F.3d 776, 787-88 (9th Cir. 2014)
 23 (“*Planet I*”), *Courthouse News Service v. Planet*, 614 Fed App’x 912 (9th Cir. 2015)
 24 (“*Planet II*”). In *Planet II*, the Ninth Circuit also granted CNS’s request to have the
 25 case assigned to a different district judge, and on remand the case was assigned to
 26 Judge Otero.

27 In a 30-page order issued on May 26, 2016, Judge Otero granted in part
 28 CNS’s motion for summary judgment and denied Planet’s cross-motion in full.

1 Applying the Ninth Circuit’s two prior decisions, Judge Otero held that there is a
 2 First Amendment right of timely access to newly filed civil complaints. Judge Otero
 3 also found that the right of timely access attaches upon receipt – before processing –
 4 and that the practice by Planet of withholding access to new complaints until after
 5 processing violated that right. ECF 195 at 18-27. And Judge Otero ruled that
 6 Planet had violated that right by receiving complaints for filing after public access
 7 was terminated for the day, which created “a distinct possibility that complaints
 8 filed late in the day may not be viewable by the public until the next day.” *Id.* at 28-
 9 30. On June 14, 2016, Judge Otero entered judgment for declaratory relief and a
 10 permanent injunction in favor of CNS and against the Clerk/CEO of VSC, ECF 199,
 11 which enjoined Planet “from refusing to make newly filed unlimited civil
 12 complaints and their associated exhibits available to the public and the press until
 13 after such complaints and associated exhibits are ‘processed,’ regardless of whether
 14 such complaints are filed in paper form or e-filed.” On July 8, Planet noticed Ninth
 15 Circuit Appeal No. 16-55977 (the “Merits Appeal”), arising from the judgment
 16 entered in favor of CNS.

17 On October 17, 2016, Judge Otero granted in part CNS’s motion to set the
 18 amount of attorneys’ fees and costs to be awarded to it pursuant to 42 U.S.C. §
 19 1988. ECF 212 (the “Fee Order”). After CNS’s motion for reconsideration was
 20 granted in part, ECF 213, and a clerical mistake was corrected, ECF 223, CNS
 21 noticed Ninth Circuit Appeal No. 16-56714 (the “Fee Appeal”) on November 15,
 22 2016. Planet noticed a cross-appeal, Ninth Circuit Appeal No. 16-56862 (the “Cross
 23 Appeal”) on December 16 “solely for the purpose of preserving [his] ability to seek
 24 a stay of the enforcement of the Fee Order under Federal Rule of Civil Procedure 62
 25 pending the outcome of [the Merits Appeal].” ECF 225.

26 On January 18, 2017, the Ninth Circuit granted CNS’s unopposed motion to
 27 consolidate the Merits Appeal with the Fee Appeal and Cross-Appeal.

B. Parties and Attorneys In *Planet* Action

The names of the parties and participants in the other actions, and the names, addresses and telephone numbers of their attorneys, are as follows:

District Court Action

1. Courthouse News Service is represented by the following attorneys:

Rachel Matteo-Boehm
Roger Myers
Jonathan Fetterly
Leila Knox
Bryan Cave LLP
3 Embarcadero Center, 7th Floor
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Telephone: (415) 675-3400

2. Michael D. Planet, in his official capacity as Court Executive Officer of the Ventura County Superior Court, is represented by the following attorneys:

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3. *Amici Curiae* the Reporters Committee for Freedom of the Press is represented by the following attorney:

Katie Lynn Townsend
Reporters Committee For Freedom Of The Press
1101 Wilson Boulevard, Suite 1100
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Telephone: (703) 807-2101

Merits and Fee Appeals

1. Courthouse News Service is represented by the following attorneys:

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2. Michael D. Planet, in his official capacity as Court Executive Officer of the Ventura County Superior Court, is represented by the following attorneys:

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C. The Instant Action Involves Similar Subject Matter As The Planet Case

As in *Planet*, this action arises from a state court clerk’s practice and policy of denying access to newly filed civil unlimited complaints until after they have been administratively processed. Despite Judge Otero’s May 26, 2016 order and June 16, 2016 judgment in *Planet*, a few state court clerks, including a handful in California, continue to take the position that new civil complaints should not be made public until after processing, and to withhold complaints from public or press review until after administrative processing, the result of which is delays in access that deny the right of timely access. OSC, a court in which the majority of complaints are now e-filed, adheres to this practice and policy even after being notified of the Order and Judgment in *Planet* and even though new paper filed complaints were historically made available for press review prior to administrative processing. Moreover, OSC

1 continues to receive complaints for e-filing after public access is terminated for the
 2 day. The result is ongoing denials of timely access: between October 1 and
 3 December 31, 2016, nearly half of newly filed civil unlimited cases were withheld
 4 from the press and public for at least one and up to nine days after the court received
 5 them for filing.

6 CNS thus brings the instant action against David Yamasaki, in his official
 7 capacity as OSC Clerk and Court Executive Officer, seeking the same relief granted
 8 in *Planet* – timely access to new civil unlimited jurisdiction complaints upon receipt
 9 for filing, prior to processing. In light of the similar positions taken by *Planet* and
 10 the clerk of OSC, and because both actions involve California court clerks and may
 11 involve some of the same California state law, including its statutes and Rules of
 12 Court, CNS believes this action and the *Planet* action involve all or a material part
 13 of the same subject matter.

14 The instant action is also similar to another 42 U.S.C. § 1983 action pending
 15 in the Southern District of New York, which CNS brought against the Clerk of the
 16 New York Supreme Court for New York County challenging his practice and policy
 17 of withholding access to e-filed complaints until after administrative processing,
 18 resulting in one out of every three complaints, on average, being withheld from
 19 viewing on the day they were received for filing. Prior to the adoption of e-filing by
 20 New York Supreme, CNS and other media were able to review new civil actions
 21 shortly after their receipt and before full processing. In a ruling from the bench after
 22 a hearing on December 16, 2016, the Honorable Edgardo Ramos issued a
 23 preliminary injunction in CNS's favor and against the Clerk, finding that access may
 24 not be withheld while complaints are being administratively processed. *Courthouse*
 25 *News Service v. Tingling*, 16 CV 8742 (ER), Hearing RT and Order Granting
 26 Prelim. Injunction (ECF 22, at 1) (copies attached hereto as Exh. A). At a status
 27 conference held on January 12, 2017, the Clerk's counsel advised Judge Ramos that
 28 the clerk intended to modify its e-filing system “to permit the immediate public

1 online viewing of case initiating electronic filings in New York County including
 2 new complaints without prior county Clerk staff review.” *Tingling*, Status Conf.
 3 RT, at 3 (copy attached hereto as Exh. B). The New York Clerk’s counsel further
 4 indicated he hoped to be able to resolve the action with CNS without the need for
 5 further litigation, and asked Judge Ramos to stay discovery in the case, which Judge
 6 Ramos granted for a period of 90 days, observing that “as long as the injunction
 7 stays in place I don’t know how [CNS] is prejudiced in any way.” *Id.* at 9.

8 Because of the similarities between the *Tingling* action and this action, CNS
 9 brings it to this Court’s attention; however, the defense in *Tingling* relied in part on
 10 New York statutes and rules, and as such it is not clear whether the *Tingling* action
 11 involves all or a material part of the subject matter as the instant proceeding for the
 12 purposes of Central District of California Local Rule 83-1.4. In the *Tingling* action,
 13 Plaintiff Courthouse News Service is represented by Rachel Matteo-Boehm,
 14 William J. Hibsher, and Jacquelyn Schell of Bryan Cave, LLP, and Defendant
 15 Tingling is represented by Lee A. Adlerstein, deputy counsel for New York’s Office
 16 of Court Administration.

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 18 Dated: January 24, 2017

BRYAN CAVE LLP
 Rachel Matteo-Boehm
 Roger Myers
 Goli Mahdavi

21
 22 By: /s/ Rachel Matteo-Boehm
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